

PROOF

**COMPENSATION COURT BILL, 1982**

No. , 1982.

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**A BILL FOR**

An Act to constitute the Compensation Court of New South Wales and to make provision with respect to its jurisdiction.

[MR WALKER—2 December, 1982.]

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See also Workers' Compensation (Amendment) Bill, 1982; Workers' Compensation (Brucellosis) Amendment Bill, 1982; Sporting Injuries Insurance (Workers' Compensation) Amendment Bill, 1982; Miscellaneous Acts (Workers' Compensation) Amendment Bill, 1982.

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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**PART I.****PRELIMINARY.****Short title.**

1. This Act may be cited as the "Compensation Court Act, 1982".

**Commencement.**

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Arrangement.**

- 15 3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–4.

PART II.—CONSTITUTION OF THE COURT—ss. 5–14.

DIVISION 1.—*Constitution*—ss. 5, 6.

DIVISION 2.—*Judges*—ss. 7–11.

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DIVISION 3.—*Commissioners*—ss. 12, 13.

DIVISION 4.—*Other officers of the Court*—s. 14.

PART III.—JURISDICTION OF THE COURT—ss. 15–31.

DIVISION 1.—*General*—ss. 15–18.

DIVISION 2.—*Exercise of jurisdiction*—ss. 19–24.

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DIVISION 3.—*Commissioner's jurisdiction*—ss. 25–28.

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DIVISION 4.—*Registrar's jurisdiction*—ss. 29, 30.

DIVISION 5.—*Pre-hearing conferences and arbitration*—s. 31.

PART IV.—APPEALS, ETC.—ss. 32–39.

DIVISION 1.—*Appeals, etc., from Court*—ss. 32–35.

5 DIVISION 2.—*Appeals, etc., from commissioners or registrars*—  
ss. 36–38.

DIVISION 3.—*Stay of proceedings*—s. 39.

PART V.—MISCELLANEOUS PROVISIONS—ss. 40–48.

SCHEDULE 1.—JUDGES.

10 SCHEDULE 2.—COMMISSIONERS.

SCHEDULE 3.—THE FUNCTIONS OF THE COURT WHICH MAY BE  
EXERCISED BY A COMMISSIONER.

SCHEDULE 4.—THE FUNCTIONS OF THE COURT WHICH MAY BE  
EXERCISED BY A REGISTRAR.

15 **Interpretation.**

4. (1) In this Act, except in so far as the context or subject-matter  
otherwise indicates or requires—

“a registrar” means the registrar or an assistant registrar;

“assistant registrar” means an assistant registrar of the Court;

20 “barrister” means a person who is on the roll of barristers in the Supreme  
Court;

“Chief Judge” means the Chief Judge of the Court;

“commissioner” means a commissioner of the Court;

25 “Court” or “Compensation Court” means the Compensation Court of  
New South Wales constituted under this Act;

“Judge” means a Judge of the Court;

“regulation” means a regulation under this Act;

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“rules” means the rules of the Court made under this Act;

“solicitor” means attorney, solicitor and proctor of the Supreme Court;

“State Compensation Board” means the State Compensation Board  
constituted under Part IV of the Workers’ Compensation Act,  
1926;

“the registrar” means the registrar of the Court.

(2) A reference in this Act to—

(a) a function includes a reference to a power, authority and duty;  
and

(b) the exercise of a function includes, where the function is a duty,  
a reference to the performance of the duty.

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PART II.

CONSTITUTION OF THE COURT.

DIVISION 1.—*Constitution.*

15 **Constitution of the Court.**

5. (1) There is hereby constituted a court of record to be known as the  
“Compensation Court of New South Wales”.

(2) There shall be a seal of the Court, and any document required  
by or under this or any other Act or law to be sealed or stamped with the  
20 seal of the Court shall be so sealed or stamped.

**Single Judge to constitute the Court.**

6. (1) The functions of the Court shall, subject to the provisions of this  
or any other Act, be exercised by a single Judge, who shall constitute the  
Court.

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(2) Subsection (1) does not affect the provisions of this or any other Act or any rules concerning the hearing and disposal of proceedings and business before a commissioner or a registrar.

DIVISION 2.—*Judges.***5 Composition of the Court.**

7. The Court shall be composed of—

- (a) a Chief Judge appointed by the Governor; and
- (b) such other Judges as the Governor may from time to time appoint under section 8 (1).

**10 Appointment and qualification of Judges.**

8. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge.

(2) A person is qualified to be appointed as a Judge if he is—

- (a) a Judge of the District Court;
- 15 (b) a barrister of not less than 5 years' standing;
- (c) a solicitor of not less than 7 years' standing; or
- (d) a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years he was on the roll of solicitors when he was not  
20 on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors,

and has not attained the age of 70 years.

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(3) The Oaths Act, 1900, applies to and in respect of a Judge in the same way as it applies to and in respect of a Judge of the District Court.

**Tenure, etc.**

9. (1) Subject to subsection (3), each Judge shall remain in office during  
5 ability and good behaviour.

(2) Each Judge shall be removable from office in the same manner only as a Judge of the District Court is by law liable to be removed from his office.

(3) Each Judge shall retire on the day on which he attains the age of  
10 70 years, unless he is granted retiring leave, in which case he shall retire on the expiration of that leave.

(4) The Chief Judge shall have the same rank, status and precedence and the same remuneration and other rights as the Chief Judge of the District Court.

15 (5) Except as provided in subsection (4), each Judge shall have the same rank, status and precedence and the same remuneration and other rights as a Judge, other than the Chief Judge, of the District Court.

(6) The Chief Judge shall have a title equivalent to that of the Chief Judge of the District Court and a Judge shall have a title equivalent to that  
20 of a Judge of that Court.

(7) Schedule 1 has effect.

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**Seniority.**

10. The Judges, other than the Chief Judge, shall have seniority according to the dates of their commissions, or, when the commissions of 2 or more of them bear the same date, according to the precedence assigned 5 to them by their commissions, or, failing assignment, according to the order of their being sworn.

**Acting Chief Judge and acting Judges.**

11. (1) In the case of the absence of the Chief Judge or of his inability to exercise the functions of his office, all the functions of the Chief Judge 10 shall, during the absence or inability, devolve upon the senior Judge.

(2) In the case of the absence, or of his inability to exercise the functions of his office, of a Judge upon whom the functions of the Chief Judge have devolved under subsection (1), the functions of the Chief Judge shall, during the absence or inability, devolve upon the Judge who is next in 15 seniority.

(3) A Judge shall, while exercising the functions of the Chief Judge under subsection (1) or (2), have the same remuneration as the Chief Judge.

(4) The Governor may, by commission under the public seal of the State, appoint any person qualified for appointment as a Judge to act as a 20 Judge for a time not exceeding 12 months to be specified in the commission.

(5) An acting Judge shall, for the time and subject to the conditions or limitations specified in his commission, have and may exercise the functions of a Judge and shall, for the purposes of this or any other Act, be deemed to be a Judge.

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**DIVISION 3.—Commissioners.**

**Appointment of commissioners.**

12. (1) The Governor may appoint any qualified person to be a commissioner of the Court.

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(2) A person is qualified to be appointed as a commissioner if—

(a) he is—

(i) a barrister of not less than 5 years' standing;

(ii) a solicitor of not less than 7 years' standing; or

5 (iii) a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years he was on the roll of solicitors when he was not on the roll of barristers or on  
10 the roll of barristers when he was not on the roll of solicitors; or

(b) he has, in the opinion of the Minister—

(i) had sufficient experience in workers' compensation or in other fields of compensation considered by the Minister to be relevant to the functions of a commissioner; or

15 (ii) satisfactorily completed studies in the field of law or industrial relations or some other field of study considered by the Minister to have substantial relevance to the functions of a commissioner,

and he has not attained the age of 60 years.

20 (3) Schedule 2 has effect.

**Acting commissioners.**

13. (1) The Governor may appoint any person qualified for appointment as a commissioner to act as a commissioner for a time not exceeding 12 months to be specified in the instrument of his appointment.

25 (2) An acting commissioner shall, for the time and subject to the conditions or limitations specified in the instrument of his appointment, have and may exercise the functions of a commissioner and shall, for the purposes of this or any other Act, be deemed to be a commissioner.

(3) An acting commissioner is entitled to receive such remuneration and allowances as the Governor may determine.



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(4) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of an acting commissioner, and an acting commissioner is not, in his capacity as such, subject to those provisions during his term of office.

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DIVISION 4.—*Other officers of the Court.***Appointment of other officers.**

14. (1) A registrar, assistant registrars and such other officers of the Court as may be necessary for the proper administration of this Act, the regulations and the rules may be appointed and employed under and subject  
10 to the Public Service Act, 1979.

(2) The registrar, assistant registrars and other officers of the Court shall have such functions as may be prescribed by this Act, the regulations or the rules.

(3) An assistant registrar shall have and may exercise the functions  
15 of the registrar, and all acts, matters and things done or omitted by an assistant registrar shall be as valid and effectual and shall have the same consequence as if the acts, matters and things had been done or omitted by the registrar.

(4) The Chief Judge may appoint, employ and dismiss such casual  
20 employees as he deems necessary for the purposes of this Act, and may fix wages and conditions of employment where these are not fixed in accordance with the provisions of any other Act or law.

(5) The Chief Judge may, with the approval of the Minister and of the Minister administering a government department or administrative office,  
25 arrange for the use of the services of any staff or facilities of the department or office.

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**PART III.****JURISDICTION OF THE COURT.****DIVISION 1.—General.****Jurisdiction of the Court generally.**

5    **15. (1)** The Court shall have the jurisdiction vested in it by or under this or any other Act.

**(2)** The Court, for the purpose of conducting any inquiry, investigation or hearing, shall have the same powers and authorities to summon witnesses and receive evidence as are conferred upon a commissioner  
10 appointed under Division 1 of Part II of the Royal Commissions Act, 1923, and that Act, section 13 and Division 2 of Part II excepted, shall apply to any witness or person summoned by or appearing before the Court in the same way as it applies to a witness or person summoned by or appearing before such a commissioner.

15       **(3)** In addition to the powers conferred by subsection (2), the Court, for the purpose of conducting any inquiry, investigation or hearing, shall have such powers, rights and privileges as are vested in the District Court or any Judge thereof in or in relation to any action or trial, in respect of the following matters:—

- 20       (a) compelling the attendance of witnesses;
- (b) compelling witnesses to answer questions which the Court deems to be relevant to the inquiry, investigation or hearing;
- (c) compelling the production of books, documents and writings;
- 25       (d) punishing persons guilty of disobedience of any order or summons made or issued by the Court.

**References to commissioners or registrars.**

16. **(1)** A Judge may, before the commencement of any proceedings or at any stage in any proceedings before him, refer any matter to a commissioner or a registrar—

- 30       (a) to be dealt with in the manner specified in the terms of reference;  
          or

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(b) for the purpose of the taking by the commissioner or registrar of such action, in respect of the matter, as is specified in the terms of reference.

5 (2) A reference under subsection (1) shall require only the doing of a thing that is within the jurisdiction of the Court.

**Decisions of the Court.**

17. (1) A decision of the Court in any matter shall be upon the real merits and justice of the case.

(2) The Court shall not be bound to follow strict legal precedent.

10 (3) Subject to Part IV, a decision or proceeding of the Court shall not—

(a) be vitiated by reason of any informality or want of form; or

(b) be liable to be challenged, appealed against, reviewed, quashed or called in question by any court.

15 (4) Nothing in subsection (3) shall prevent the Court from reconsidering any matter which has been dealt with by it, or from rescinding, altering or amending any decision previously made or given, all of which the Court shall have authority to do.

(5) Subject to Part IV—

20 (a) no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any decision or proceeding of the Court relating to, or on the face of the proceedings appearing to relate to, any matter within its jurisdiction; and

25 (b) the validity of any decision or proceeding of the Court shall not be challenged in any manner.

(6) In this section, “decision” includes award, order, determination, ruling and direction.

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**Costs.**

18. (1) Subject to this section, the Court may in any matter make such order as to the payment of fees or costs as it thinks just and may assess the amount of those fees or costs.

5 (2) Without affecting the generality of subsection (1), the Court may, in such circumstances as are specified in the rules, order the payment of fees or costs by a legal representative.

(3) The Court shall not order the payment of fees or costs by—

10 (a) an applicant for compensation under the Workers' Compensation Act, 1926; or

(b) an appellant (not being an employer or an insurer) against an award or order or a determination, ruling, direction or decision under that Act,

unless it is satisfied that his application was frivolous or vexatious or was  
15 made fraudulently or without proper justification.

(4) Fees and costs included in an order or assessment under subsection (1) or (2) shall not, where provision is made for the like fees and costs in the scales applicable to proceedings in the Supreme Court in the Common Law Division, exceed the fees and costs provided for in the highest of those  
20 scales except with the approval of the Compensation Court or the officer taxing the fees and costs.

*DIVISION 2.—Exercise of jurisdiction.***Proceedings of the Court.**

19. (1) The Court may—

25 (a) conduct its proceedings in public or private as it may think fit;

(b) adjourn its proceedings to any time or place; and

(c) submit to a medical referee or medical panel appointed under the Workers' Compensation Act, 1926, for report any matter which seems material to any question arising in a proceeding before it.

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(2) A report obtained under subsection (1) (c) shall be admitted in evidence in the proceedings to which it relates if the Court so directs.

**Sittings of the Court.**

20. (1) The Court shall sit at such places and times as the Chief Judge  
5 may direct.

(2) More than one sitting of the Court may be held at the same time.

**Arrangement of business of the Court.**

21. The Chief Judge is responsible for making, and may make—

10 (a) arrangements as to the Judge who is to exercise the Court's jurisdiction in particular matters or classes of matters; and

(b) where the Court's functions may be exercised by a commissioner or a registrar—arrangements as to the commissioner or registrar who is to exercise those functions.

**15 Rules of court as to procedure, practice, etc.**

22. The Court may make rules for or with respect to—

20 (a) all matters of procedure and practice, including the prescription of forms to be used, scales of fees and costs to be paid to barristers and solicitors, expenses to be paid to witnesses and fees payable in any proceedings before the Court; and

(b) any matter for or with respect to which the Court is authorised by the regulations or by or under any other Act to make rules.

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**Enforcement of awards and orders.**

**23. (1)** Where an award or order of the Court for the payment of money has been entered up or made in favour of any person and provision is not made in any other Act for the recovery of that money, the registrar—

- 5 (a) upon the application of the person or of his solicitor or agent, shall issue and deliver to the person, solicitor or agent a certificate in or to the effect of the prescribed form; and
- (b) shall make a minute or memorandum thereof against the entry of the award or order.

10 **(2)** A person to whom a certificate has been issued and delivered under subsection (1) may file, or cause to be filed, the certificate with the registrar under the District Court Act, 1973, at the proclaimed place under that Act which is nearest the debtor's place of residence or business.

15 **(3)** A registrar under the District Court Act, 1973, with whom a certificate has been filed by a person under subsection (2) shall enter judgment for the person for the amount of the certificate together with—

- (a) the fees paid for the certificate to the registrar of the Compensation Court; and
- (b) the fees paid for filing the certificate and entering judgment.

**20 Examination de bene esse.**

**24. (1)** The Court may, on the application of a party to proceedings before it, authorise any barrister, attorney, commissioner for taking affidavits or justice of the peace, whether of New South Wales or elsewhere, or any British Consular Officer or Australian Consular Officer in any place out of  
25 New South Wales, to take at some convenient place, the examination of a witness de bene esse, if the witness is absent from New South Wales or is expected to die or to be unable from sickness or infirmity to attend at the hearing of any proceeding.

**(2)** In subsection (1), "Australian Consular Officer" and "British  
30 Consular Officer" have the meanings respectively ascribed thereto in section 26 of the Oaths Act, 1900.

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DIVISION 3.—*Commissioner's jurisdiction.***Commissioner's jurisdiction.**

25. (1) A commissioner may exercise the functions of the Court specified in Schedule 3.

5 (2) A commissioner shall, in the exercise of any function of the Court conferred on him by or under this Act, be deemed to be the Court.

(3) The Governor may, by regulation, amend Schedule 3 by—

(a) adding thereto any matter;

(b) altering any matter therein; or

10 (c) omitting any matter therefrom,

or may, by regulation, omit the Schedule and insert instead a new Schedule.

**Procedure before commissioners.**

26. (1) Proceedings before a commissioner shall be conducted with as little formality and technicality as the proper consideration of the matter 15 before the commissioner permits.

(2) A party to any proceeding before a commissioner may be represented by—

(a) a solicitor; or

20 (b) a person who is not qualified to practise law but who belongs to a class of persons prescribed by the rules for the purposes of this paragraph.

**Costs—representation by unqualified persons.**

27. In accordance with the rules, if any, made in that behalf, costs may be claimed under this Act in respect of the representation of a party by a 25 person referred to in section 26 (2) (b).

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**References to registrars.**

28. (1) A commissioner may, before the commencement of any proceedings or at any stage in any proceedings before him, refer any matter to a registrar—

- 5       (a) to be dealt with in the manner specified in the terms of reference; or  
         (b) for the purpose of the taking by the registrar of such action, in respect of the matter, as is specified in the terms of reference.

(2) A reference under subsection (1) shall require only the doing of a thing that is within the jurisdiction of a commissioner.

10

**DIVISION 4.—Registrar's jurisdiction.****Registrar to be deemed to be the Court in certain circumstances.**

29. A registrar shall, in the exercise of any function of the Court conferred on him by or under this or any other Act, be deemed to be the Court.

**Registrar's jurisdiction.**

15 30. (1) A registrar may exercise the functions of the Court specified in Schedule 4.

(2) The Governor may, by regulation, amend Schedule 4 by—

- (a) adding thereto any matter;  
(b) altering any matter therein; or  
20 (c) omitting any matter therefrom,

or may, by regulation, omit the Schedule and insert instead a new Schedule.



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 DIVISION 5.—*Pre-hearing conferences and arbitration.*
**Pre-hearing conferences and arbitration.**

31. (1) Where proceedings are pending in the Court's jurisdiction, the Chief Judge may—

- 5       (a) direct the registrar to arrange a conference between the parties to the proceedings or their representatives, to be presided over by a commissioner or a registrar, as the Chief Judge thinks fit; or
- (b) refer the proceedings, or any matter arising from the proceedings, for arbitration by an arbitrator.

10       (2) The procedure for arranging or conducting a pre-hearing conference shall be in accordance with the rules.

         (3) The procedure for appointing arbitrators for the purposes of subsection (1) (b), and for arranging or conducting arbitration proceedings, shall be as prescribed.

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**PART IV.**
**APPEALS, ETC.**

 DIVISION 1.—*Appeals, etc., from Court.*
**Interpretation.**

32. (1) In this Part, "award" includes order, decision, determination,  
20 ruling and direction.

         (2) A reference in this Part to the making of an award includes, where the award is a ruling or direction, a reference to the giving of the ruling or direction.

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**Appeals from Court.**

33. If a party to any proceedings before the Court is aggrieved by an award of the Court in point of law or in relation to the admission or rejection of any evidence, that party may appeal to the Supreme Court.

**5 Stated cases.**

34. (1) When any question of law or of the admission or rejection of any evidence arises in any proceedings before the Court, the Court may of its own motion, and shall, if in the manner and within the time prescribed by the rules a party to the proceedings so requests, state a case for the  
10 decision of the Supreme Court on that question.

(2) A case may be stated under this section notwithstanding that an award has been made by the Compensation Court.

**Decision on appeal or stated case.**

35. The decision of the Supreme Court upon the hearing of an appeal or  
15 stated case under this Part shall be binding upon the Compensation Court and upon all the parties to the proceedings in respect of which the appeal was made or the case stated.

*DIVISION 2.—Appeals, etc., from commissioners or registrars.*

**Appeals from commissioners or registrars.**

20 36. If a party to any proceedings before a commissioner or a registrar is aggrieved by an award of the commissioner or registrar, that party may appeal to the Court.

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**Appeal to be by way of rehearing.**

37. (1) Where an award against which an appeal has been made under section 36 has been made after a hearing, the appeal shall, subject to subsection (2), be by way of rehearing.

5 (2) Further evidence shall not be taken on an appeal under this Division except by leave of the Judge hearing the appeal.

(3) Leave shall be given under subsection (2) only where the Judge is of the opinion that there are special circumstances which warrant the taking of further evidence.

**10 References to the Court by a commissioner or a registrar.**

38. A commissioner or a registrar may—

(a) of his own motion; or

(b) on application by the parties, or any one of them,

refer to the Court any question or matter arising in proceedings before him  
15 where he is of the opinion that the question or matter is of such importance as to warrant consideration by the Court.

**DIVISION 3.—*Stay of proceedings.*****Stay of proceedings.**

39. (1) Subject to any order of the Supreme Court, the Compensation  
20 Court may order a stay of proceedings, on such terms as the Compensation Court may think fit, in respect of any award the subject of an appeal, a stated case or a request for a stated case under this Part.

(2) In the absence of a stay of proceedings ordered by the Supreme Court or by the Compensation Court, a notice of appeal, stated case or  
25 request for a stated case shall not operate as a stay of proceedings.

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**(3) Where—**

- (a) there is a liability to make weekly payments of compensation under an award of a commissioner;
- 5 (b) an appeal is made to the Compensation Court against the award; and
- (c) a stay of proceedings is ordered in respect of the appeal,

the stay of proceedings shall not affect the liability to make the weekly payments of compensation under the award appealed against in so far as the liability relates to the period commencing from the date of the application  
10 for the determination which gave rise to the award.

**(4) Where—**

- (a) there is a liability to make weekly payments of compensation under an award of a commissioner;
- 15 (b) an appeal is made to the Compensation Court against the award; and
- (c) the effect of the decision in respect of the appeal is to terminate the liability to make the weekly payments of compensation,

the Compensation Court may—

- 20 (d) order that the Uninsured Liability and Indemnity Scheme established under the Workers' Compensation Act, 1926, bear the whole or a specified part of the liability to make the weekly payments of compensation in so far as the liability relates to the period commencing from the date of the application for the determination which gave rise to the award and ending at the  
25 time of the decision referred to in paragraph (c); and
- (e) give such directions (which shall have effect according to their tenor) as are necessary to give effect to the order.
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## PART V.

## MISCELLANEOUS PROVISIONS.

**Compensation Court Account.**

5 **40. (1)** There shall be established in the Special Deposits Account in the Treasury a Compensation Court Account, administered by the Minister, into which shall be deposited—

(a) all money paid from the fund established under section 41 of the Workers' Compensation Act, 1926, towards meeting the expenditure referred to in subsection (2); and

10 (b) any fees which may be received by the Court.

(2) Subject to subsection (3), there shall be paid from the Compensation Court Account all amounts required for the remuneration, fees and allowances payable to—

15 (a) the Judges, commissioners and other officers and staff of the Court; and

(b) arbitrators appointed under this Act,

and any other costs of operation of the Court (including the provision of court accommodation and Judges' chambers).

20 (3) The approval of the Minister shall be obtained to the payment out of the Compensation Court Account of any amount required to meet expenditure of an exceptional or unusual nature.

(4) The Chief Judge shall, in the month of July in each year, prepare and forward to the State Compensation Board an estimate of the amount required for the expenditure referred to in subsection (2) for the 25 next following year having regard to any amount which is at credit to the Compensation Court Account on the preceding 30th June and any fees likely to be received by the Court during that year.

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**Delegation.**

41. (1) The Chief Judge may, by instrument in writing, delegate to—
- (a) a Judge;
  - (b) a commissioner; or
  - 5 (c) a registrar,
- the exercise of such of the functions of the Court or of the Chief Judge as are specified in the instrument.
- (2) The registrar may, by instrument in writing, delegate to an officer of the Court the exercise of such of his functions (except functions 10 delegated to him under subsection (1) the further delegation of which is prohibited by the terms of the delegation) as are specified in the instrument.
- (3) The Chief Judge or the registrar shall not, under this section, delegate the function of hearing any matter before the Court.
- (4) A function the exercise of which has been delegated under this 15 section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate.
- (5) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of 20 delegation.
- (6) Notwithstanding any delegation under this section, the Chief Judge, the Court or the registrar, as the case may be, may continue to exercise any function delegated.
- (7) Any act or thing done or suffered by a delegate acting in the 25 exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Chief Judge, the Court or the registrar, as the case may be, and shall be deemed to have been done or suffered by the Chief Judge, the Court or the registrar, as the case may be.
- 30 (8) The Chief Judge or the registrar may, by instrument in writing, revoke wholly or in part any delegation made by him under this section.

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(9) An instrument purporting to have been signed by a person in his capacity as a delegate of the Chief Judge or the registrar shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Chief Judge or the registrar, as the case may be, and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Chief Judge or the registrar, as the case may be.

(10) Any instrument necessary to be executed and any notice, order, summons or other like document requiring authentication for the purpose of the exercise of any function delegated to any person under this section shall be sufficiently executed or authenticated, as the case may be, if signed by the delegate in such a way as to show that he does so under and in pursuance of the delegation.

(11) Except as provided in subsection (2), nothing in this section authorises the delegation of the powers of delegation conferred by this section.

**Rule Committee.**

42. (1) Where, in this or any other Act, it is provided that the Court may make rules, those rules may be made by a Rule Committee consisting of—

- (a) the Chief Judge;
- (b) 3 other appointed Judges;
- (c) an appointed commissioner;
- (d) an appointed practising barrister; and
- 25 (e) an appointed practising solicitor.

(2) In this section, “appointed” means appointed to the Rule Committee by the Chief Judge in writing under his hand.

(3) A person appointed shall hold office for the time specified in the instrument of his appointment but may resign by writing under his hand 30 addressed to the Chief Judge.

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(4) At a meeting of the Rule Committee the chairman shall be—

- (a) the Chief Judge, if he is present; or
- (b) in the absence of the Chief Judge, a Judge who is present and chosen by the meeting.

5 (5) In case of equality of voting, the chairman shall have a casting as well as a deliberative vote.

(6) Any 4 members of the Rule Committee shall constitute a quorum.

10 (7) The registrar or, in the absence of the registrar, a person approved by the Chief Judge shall be secretary of the Rule Committee.

(8) Subject to this section, the Rule Committee may regulate its own procedure.

**Liaison with State Compensation Board.**

15 43. (1) The Chief Judge and the Chairman and members of the State Compensation Board shall meet at least once in every 6 months for the purpose of discussing matters relative to the respective functions of the Court and the Board.

20 (2) Such other Judges and such commissioners and registrars as the Chief Judge shall nominate may attend a meeting referred to in subsection (1).

(3) A member of the State Compensation Board, other than the Chairman, need not attend a meeting referred to in subsection (1) if the Chairman so approves.

25 (4) In addition to the meetings referred to in subsection (1) the Chief Judge and the Chairman of the State Compensation Board shall establish and maintain such continuing liaison as is necessary for the proper functioning of any scheme for payment of compensation in respect of injuries within the Court's jurisdiction or the Board's administration.



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(5) The Chief Judge may refer to the State Compensation Board for inquiry and report or recommendation to the Chief Judge any matter relating to the functions of the Court or the Board.

**Rules.**

- 5     **44.** (1) Without affecting the generality of any other provision of this Act, the Court may make, in relation to matters within its jurisdiction, rules for or with respect to—
- (a) the conduct of call-overs of matters for hearing by the Court;
  - (b) the issue and return of subpoenas;
  - 10    (c) the listing of matters and the removal of matters from lists;
  - (d) pre-hearing conferences and arbitration;
  - (e) the charging of fees for interpreting services;
  - (f) the enforcement of awards, orders, determinations, rulings, directions or decisions of the Court;
  - 15    (g) authorising a commissioner or a registrar to—
    - (i) exercise any function of the Court (not being the function of making rules or a function the exercise of which may be vested in a commissioner or a registrar, as the case may be, under any other provision of this Act); or
    - 20    (ii) exercise any function that, under the rules, is necessary to be exercised; and
  - (h) any matters that by or under the provisions of this or any other Act are required or permitted to be prescribed by rules or that are necessary or convenient to be prescribed by rules for carrying out
  - 25    or giving effect to those provisions.

(2) Rules may be made so as to apply differently according to such factors as may be specified in the rules.

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**Gazettal and Parliamentary review of rules.**

45. (1) A rule shall—

- 5
- (a) be published in the Gazette;
  - (b) take effect on and from the date of publication or a later date specified in the rule; and
  - (c) be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

10 (2) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a rule has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

**Judicial notice of rules.**

15 46. Judicial notice shall be taken—

- (a) of a rule made or purporting to have been made under this Act and published in the Gazette; and
- (b) of the date of its publication.

**Presumption as to making of rules.**

20 47. It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule under this Act have been complied with and performed.

**Regulations.**

25 48. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to all matters that by this Act are required or permitted to be prescribed by regulations or that are necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

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(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;  
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

## SCHEDULE 1.

(Sec. 9 (7).)

## JUDGES.

**Interpretation.**

1. In this Schedule—

“statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

**Preservation of rights of Judge if previously public servant, etc.**

2. (1) Subject to subclause (2) and to the terms of his appointment, where a Judge was, immediately before his appointment as a Judge—

- (a) an officer of the Public Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by any statutory body; or

(d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he—

- (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;

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- (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a Judge; and
- 5 (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if he had continued to be such an officer, contributor or person during his service as a Judge, and—
- 10 (h) his service as a Judge shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- 15 (i) he shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this clause.
- (2) Where a Judge would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon 20 his appointment as a Judge or at any later time while he holds office as a Judge) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him and the Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.
- 25 (3) Subclause (2) does not prevent the payment to a Judge upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.
- (4) A Judge shall not, in respect of the same period of service, be entitled to 30 claim or receive a benefit under this Act and another Act.

**Judge entitled to re-appointment in former employment in certain cases.**

3. (1) In this clause, "statutory body" means any body declared under clause 4 to be a statutory body for the purposes of this Schedule.
- (2) A person who—
- 35 (a) ceases to be a Judge otherwise than pursuant to section 9 (2);

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SCHEDULE 1—*continued.*JUDGES—*continued.*

- (b) was, immediately before his appointment as a Judge—
- 5           (i) an officer of the Public Service; or
- (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which he would have been entitled to retire had he continued to be such an officer or employee,
- 10 shall be entitled to be appointed to some position in the Public Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which he held immediately before his appointment as a Judge.

**Statutory bodies.**

4. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

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## SCHEDULE 2.

(Sec. 12 (3).)

## COMMISSIONERS.

**Term of office.**

- 20 1. (1) A commissioner shall, subject to this Schedule, hold office until he attains the age of 60 years.
- (2) Subject to subclause (3), the Governor may, before the expiration of a commissioner's term of office, extend that term for a period not exceeding 12 months.
- (3) A commissioner shall not hold office after he attains the age of 65 years.
- (4) A commissioner shall devote the whole of his time to the duties of his office.

**25 Remuneration.**

2. A commissioner is entitled to be paid—
- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and

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SCHEDULE 2—*continued.*COMMISSIONERS—*continued.*

- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

**5 Application of Public Service Act, 1979.**

3. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a commissioner, and, subject to this Schedule, a commissioner is not, in his capacity as such, subject to those provisions during his term of office.

**Leave.****10 4. (1) A commissioner is entitled to such leave as may be—**

- (a) prescribed; or  
(b) specified in respect of him in the instrument of his appointment.

(2) Leave may be prescribed or specified as referred to in subclause (1) by reference to the leave entitlement of the holder of any other office or class of office.

**15 Oath of office.**

5. The Oaths Act, 1900, applies to and in respect of a commissioner in the same way as it applies to and in respect of a magistrate.

**Removal from office.**

6. The Governor may remove a commissioner from office for misbehaviour or  
20 incompetence.

**Vacation of office.**

7. A commissioner shall be deemed to have vacated his office if he—

- (a) dies;  
(b) resigns his office by writing under his hand addressed to the Minister;  
25 (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or  
(d) is removed from office by the Governor under clause 6.

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SCHEDULE 2—*continued.*COMMISSIONERS—*continued.***Rights of commissioner if previously public servant, etc.**

5 8. (1) Schedule 1 applies to a commissioner in the same way as it applies to a Judge.

(2) For the purposes of subclause (1), clause 3 (2) of Schedule 1 shall be read as if the reference therein to section 9 (2) were a reference to clause 7 (paragraph (b) excepted) of this Schedule.

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SCHEDULE 3.

(Sec. 25.)

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## THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A COMMISSIONER.

1. The functions of the Court (other than any function involving the making of rules) conferred or imposed by, or arising under, the following provisions of the Workers' Compensation Act, 1926:—

- 15 (a) section 6 (3) (h) and (i);  
 (b) section 7 (4B) (e), (g) and (h) and (5A);  
 (c) section 9 where the total amount of compensation involved does not, as at the date of the filing of the application for determination under that section, exceed \$5,000 or, where some other amount is prescribed for the purposes  
 20 of this paragraph, that other amount;  
 (d) section 10A (1);  
 (e) section 10B (1);  
 (f) section 11 (1) where the worker is, at the time in respect of which the determination under that subsection is to be made, employed in some suitable  
 25 employment or business;  
 (g) section 15 (including matters or questions arising under that section as applied to awards referred to in section 8 (2) of the Workers' Compensation (Dust Diseases) Act, 1942);  
 (h) section 16;

*Compensation Court.*SCHEDULE 3—*continued.*THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A  
COMMISSIONER—*continued.*

- (i) section 51 (8) and (12);
- 5 (j) section 54.
2. The Court's jurisdiction in the following matters:—
- (a) the granting of interim awards of compensation under the Workers' Compensation Act, 1926, where—
- 10 (i) there is a dispute between insurers or employers or insurers and employers as to the liability for payment of the compensation;
- (ii) there is no dispute as to the worker's entitlement to the compensation; and
- (iii) formal proof of entitlement is required;
- (b) the hearing and determining of appeals against decisions of taxing officers;
- 15 (c) the making of summary awards of compensation under the Workers' Compensation Act, 1926, where no answer has been filed;
- (d) the hearing and determining of references to the Court by the registrar or a conciliator;
- (e) the hearing of interlocutory applications.
- 20 3. In accordance with the terms of reference, any matter referred to a commissioner by a Judge.

## SCHEDULE 4.

(Sec. 30.)

## THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A REGISTRAR.

- 25 1. The functions of the Court (other than any function involving the making of rules) conferred or imposed by, or arising under, the following provisions of the Workers' Compensation Act, 1926:—
- (a) section 10 (3) (a), (3) (c), (4) (b) and (5);
- (b) section 16 (1B) (b) and (d);
- 30 (c) section 17.



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SCHEDULE 4—*continued.*

THE FUNCTIONS OF THE COURT WHICH MAY BE EXERCISED BY A  
REGISTRAR—*continued.*

2. The Court's jurisdiction in the hearing of interlocutory applications.
- 5 3. In accordance with the terms of reference, any matter referred to a registrar by a Judge or a commissioner.





